

Attorney Docket No.: 3257-031853

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/719,352 Confirmation No. : 3304
Applicant : John R. WALL
Filed : November 21, 2003
Title : **Connection System for Plastic Web Fencing**
Art Unit : 3679
Examiner : Daniel J. MILLS
Customer No. : 28289

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

DECLARATION UNDER 37 C.F.R. § 1.132

1. I am a citizen of the United States of America, and a resident of Carmichaels, PA. I was born and raised on a farm in New Zealand and began working as a fencing contractor and large herd manager. In 1969, I moved to Pennsylvania, and founded a fence company that promoted smooth wire fence technology throughout North America. It is my company's continuous goal to address the durability/strength, cost, aesthetics, safety, and installation aspects relating to horse rail fences. I have built fences in 44 states and at 48 universities and land grant colleges. I have over 40 years experience in the fencing industry. I have been an instructor at the American Fence Association in Field Training School in Waco, Texas for 15 years and provide consulting services on a ongoing basis.

2. I am the sole inventor of the subject matter disclosed and claimed in the above-identified patent application.

3. I have procured the commercially available Safe-Fence railing system and have performed various tests on it.

A. The Safe-Fence railing system includes a two inch electrifiable fence tape that serves as the rail portion of the system. I tested the fence tape and noticed that it fails to support itself when it is placed in a vertical position on its edge. On its own, the fence tape rail portion lacks rigidity and manual deformability. I performed a pull test on the rail portion, as shown in Exhibit A. Specifically, I laced one end of one rail portion through a slotted connector of my invention and the other end through a slotted joining connector. I laced one end of another rail portion through the slotted joining connector and laced the other end of that rail portion to another slotted connector. This arrangement was able to hold the weight of the slotted joining connector and the slotted connector in a vertical orientation, however, this arrangement came undone (rail portion slid through the slotted connector) when any additional tension was applied. In other words, the frictional force imparted on the rail portion via the connector portion was inadequate. This is due to the fact that the Safe-

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Fence rail portion is not sufficiently rigid in order to be adequately secured within the slotted connector. Based upon this foregoing test and observations, any rail for use with the slotted connector of my invention needs to exhibit some degree of stiffness and deformity to allow the rail to be secured within the slotted connector in the presence of force exerted against it. The fence tape rail portion of the Safe-Fence railing system does not meet these criteria. Furthermore, the fence tape rail portion is constructed of a nylon mesh material, which may be susceptible to tearing upon being snagged, and the electrifiable wires are exposed, which will result in corrosion thereof, upon prolonged exposure to the elements. These deficiencies are not present in my rail.

B. The Safe-Fence railing system includes a buckle embodied as a bent metal rod. I performed a tensioning test on the buckle, as shown in Exhibit B. Specifically, I laced one end of fence rail of my invention through the Safe-Fence buckle. I then attempted to tension the fence rail, but the buckle collapsed. Thus, the Safe-Fence buckle is inoperative when its use is attempted with my rail.

4. In sum, the fence tape rail portion of the Safe-Fence product, cited by the Examiner in my above-identified patent application, will not work in combination with a buckle as I have claimed in the application. Likewise, the buckle of the Safe-Fence product will not work in combination with the fence rail as I have claimed in the application.

5. The spreadsheet of attached Exhibit C is indicative of the commercial success of the claimed invention, including the rail and slotted connector (buckle). Specifically, from 2003 until September 2007, substantial sales, on the order of 42,882 rails and 103,197 slotted connectors have been recorded. Customers have chosen my fencing system due to its overall strength obtained through utilization of a sturdy composite rail in connection with a sturdy metal buckle. Customers appreciate the fact that the metal buckle securely holds the composite railing during tensioning of the railing and in instances when stress is exerted against the railing by livestock (i.e., the buckle/rail arrangement will not come apart). My fencing system minimizes risk of injury, but maintains a flat and smooth appearance that is impervious to the elements. The foregoing qualities, in addition to the ease of installation of the fencing system, including the flexibility provided by using buckle connectors, have caused customers to choose my fencing system, thereby resulting in the aforementioned substantial sales. Based upon my experience and analysis of the Safe-Fence railing system, the advantages associated with my invention, especially the strength obtained from my composite rail and steel buckle arrangement, are not found in the Safe-Fence railing system or other prior art fencing systems of which I am aware.

6. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both, under § 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

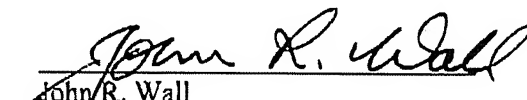
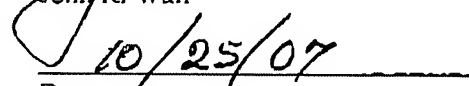

John R. Wall

Date

Exhibit A

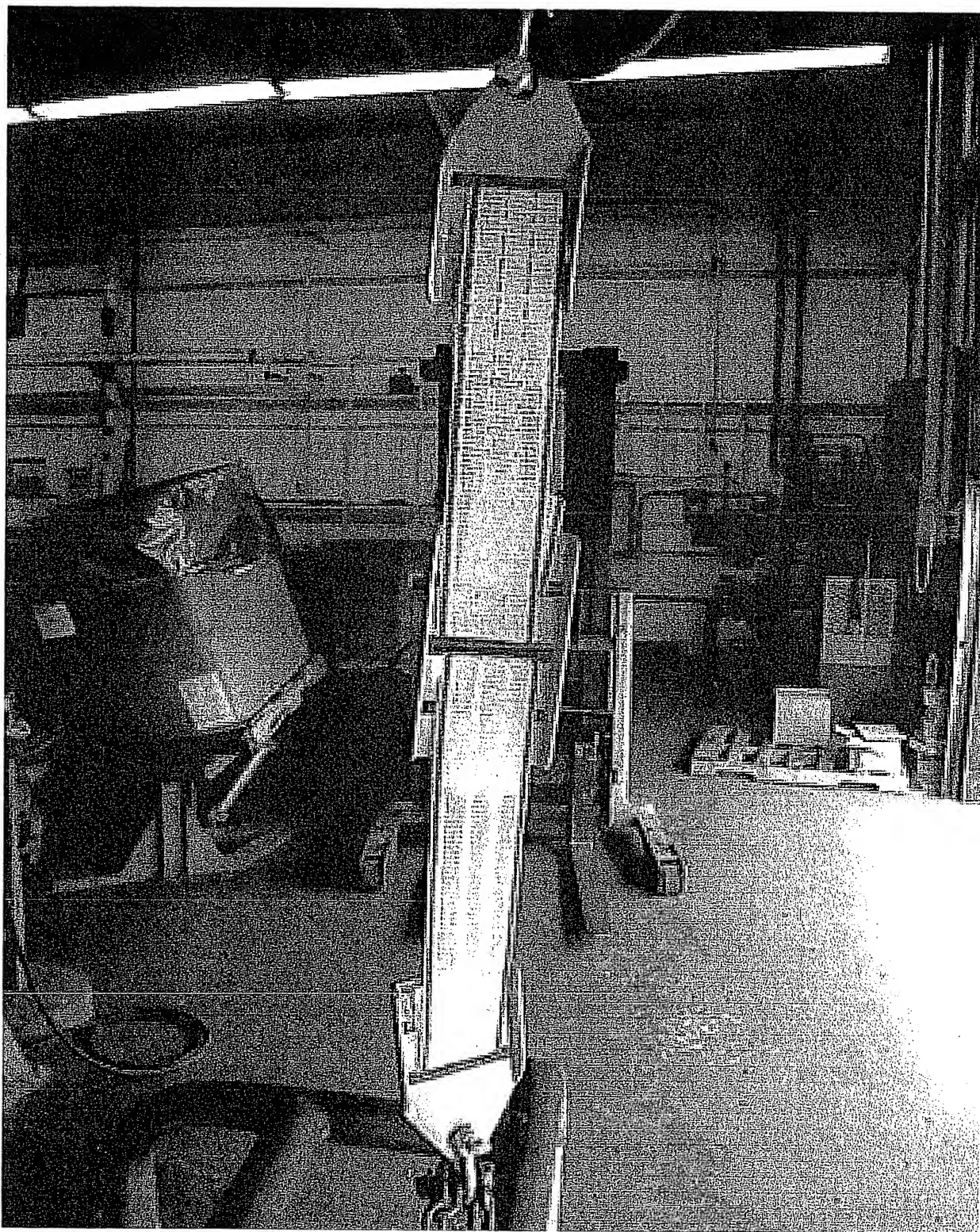


Exhibit B

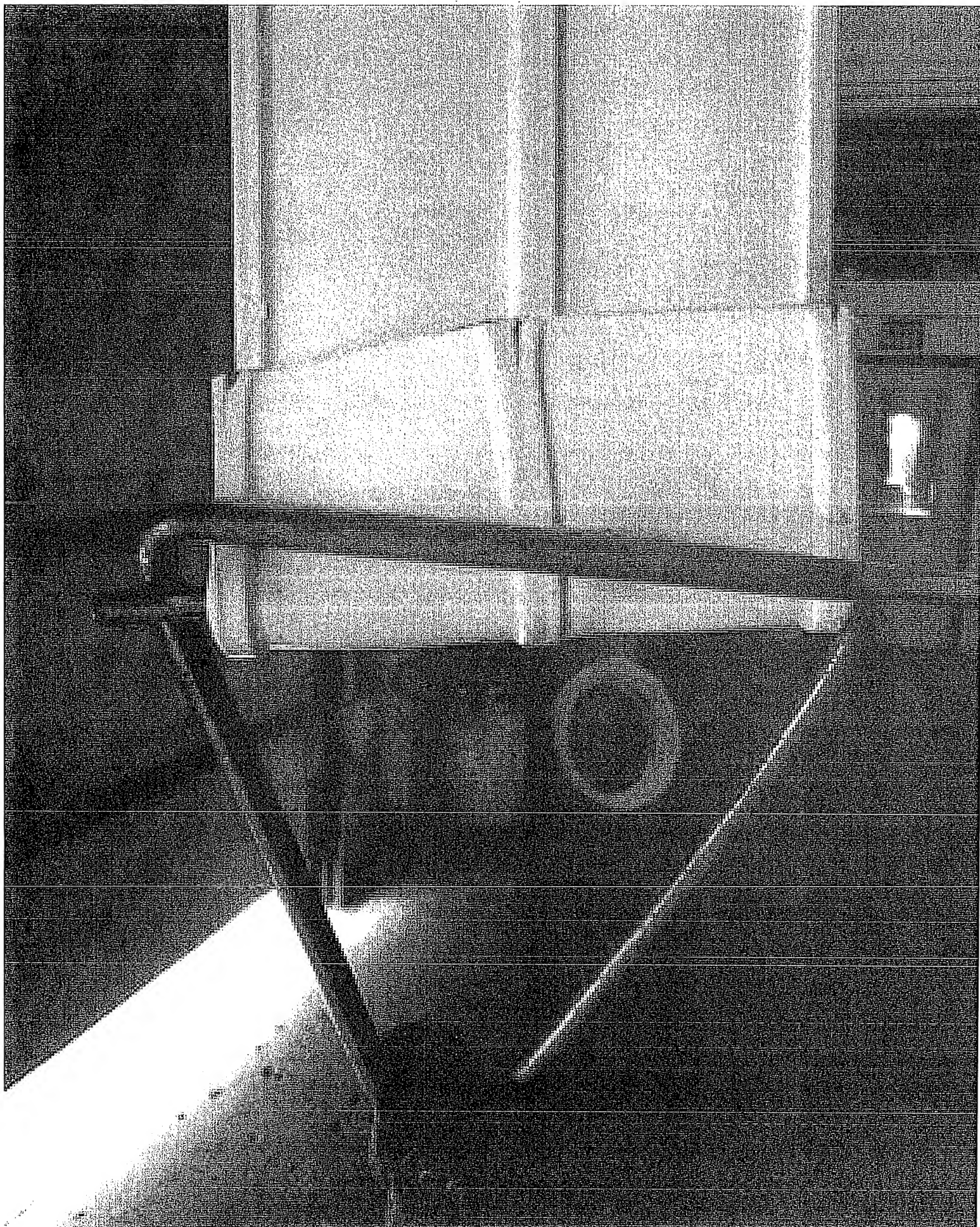


Exhibit C

Buckles & Horserail Comparison FY: 2003-2007

YTD	Rail Qty Totals	Growth Rate Per Year	Buckles Qty Totals	Growth Rate Per Year	Qty Ratio	
2003	7,670		591		N/A	
2004	8,008	4.41%	12,704	2049.58%	1.59:1	
2005	9,244	15.43%	26,442	108.14%	2.86:1	
2006	10,097	9.23%	32,214	21.83%	3.19:1	
2007	7,863	-22.13%	31,246	-3.00%	3.97:1	Jan-Sept
	<u><u>42,882</u></u>		<u><u>103,197</u></u>			